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September 12, 2007

**DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS**

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: October 3, 2006

Case Number: TSO-0440

This Decision concerns the eligibility of XXXXX (the individual) to hold an access authorization¹ under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." In this Decision, I will consider whether, on the basis of the testimony and other evidence in the record of this proceeding, the individual's access authorization should be granted. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should be granted.

I. Background

The individual is an employee of a DOE contractor. Due to concerns about the individual's past use of alcohol, the DOE local office conducted a Personnel Security Interview (PSI) with the individual on March 7, 2006. *See* DOE Exhibit 5. Because the security concern remained unresolved after the PSI, the DOE local office requested that the individual be interviewed by a DOE consultant psychiatrist. The psychiatrist interviewed the individual on May 30, 2006. *See* DOE Exhibit 3. The DOE local office ultimately determined that the derogatory information concerning the individual created a substantial doubt about his eligibility for an access authorization, and that the doubt could not be resolved in a manner favorable to him. Accordingly, the DOE local office proceeded to obtain authority to initiate an administrative review proceeding.

The administrative review proceeding began with the issuance of a Notification Letter to the individual. *See* 10 C.F.R. § 710.21. That letter informed the individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for access authorization.

¹Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

The Notification Letter included a statement of that derogatory information and informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding his eligibility for access authorization. The individual requested a hearing, and the DOE local office forwarded the individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter.

At the hearing convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the individual, his wife, a co-worker, and the DOE consultant psychiatrist. The DOE Counsel and the individual submitted exhibits prior to the hearing.

I have reviewed and carefully considered the evidence in the record. I have considered the evidence that raises a concern about the individual's eligibility to hold a DOE access authorization, as well as the evidence that mitigates that concern. I conclude, based on the evidence before me and for the reasons explained below, that the security concern in this case has been sufficiently resolved.

II. Analysis

A. The Basis for the DOE's Security Concern

As indicated above, the Notification Letter issued to the individual included a statement of the derogatory information in the possession of the DOE that created a substantial doubt regarding the individual's eligibility for access authorization. In the Notification Letter, the DOE characterized this information as indicating that the individual has been or is a user of alcohol habitually to excess, or has been diagnosed as alcohol dependent or as suffering from alcohol abuse. DOE Exhibit 1 (citing 10 C.F.R. § 710.8(j)).

This statement was based on seven prior alcohol-related arrests of the individual over a period from May 1989 through December 2002. The Notification Letter also cited a June 1, 2006 report by the DOE consultant psychiatrist concluding that the individual suffered from "Alcohol Abuse, in sustained partial remission." DOE Exhibit 3. Elaborating on his diagnosis in his hearing testimony, the DOE consultant psychiatrist stated, "I put down that the problem was in sustained remission because he hadn't had any significant problems for more than a year before I saw him." Transcript of Personnel Security Hearing (Tr.) at 13. The individual has not challenged any of the facts underlying the DOE psychiatrist's diagnosis, and at the hearing acknowledged that he has had problems with alcohol in the past. *See, e.g.,* Tr. at 61, 64.

In other DOE access authorization proceedings, Hearing Officers have consistently found that the excessive use of alcohol can impair an individual's judgment and reliability, and his ability to control impulses. These factors amplify the risk that the individual will fail to safeguard classified matter or special nuclear material. *See, e.g., Personnel Security Hearing*, Case No. TSO-0168, 29 DOE ¶ 82,807 (2005) (and cases cited therein). The remainder of this decision will focus on whether this legitimate security concern has been resolved.

B. Whether the Security Concern Has Been Resolved

A hearing under Part 710 is held “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization,” i.e., “to have the substantial doubt regarding eligibility for access authorization resolved.” 10 C.F.R. § 710.21(b)(3), (6). Under the Part 710 regulations, the Hearing Officer is directed to make a predictive assessment as to whether granting or restoring access authorization “would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a).

“In resolving a question concerning an individual's eligibility for access authorization,” I must consider

the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

10 C.F.R. § 710.7(c). I find that the factors above most relevant to the present case are “the frequency and recency of the conduct;” “the absence or presence of rehabilitation or reformation and other pertinent behavioral changes,” and “the likelihood of continuation or recurrence,” the last being the determinative issue in this case.

The individual testified at the hearing that he has not consumed alcohol since July 2006. Tr. at 49. This testimony was corroborated by the testimony of the individual's wife, who also testified that, given the problems caused in the past by the individual's drinking, she would leave him if he started drinking again. Tr. at 48-52.

The individual explained his reasons for quitting drinking in July 2006. “In our meeting together [the May 30, 2006 psychiatric evaluation], it showed me I had some -- some kind of a problem and I needed to fix it, to cut down more or to quit.” Tr. at 64. Around the same time, the individual was asked to be a mentor in a state program for teenagers who had dropped out of school. “[T]hey were asking anybody in the family that would be willing to do it, and I said I'll -- I could do that, I can step up to the plate. . . . I'm going to set an example.” Tr. at 61.

After the testimony of the other witnesses, the DOE psychiatrist, in what he described as, “for me, an unusual turnaround,” stated that he thought “the seven months sobriety, given the other factors that are in place, would be enough to indicate to me that there's currently adequate evidence of rehabilitation or reformation . . .” Tr. at 76-77. He remarked that what he had heard at the hearing

was “all positive” and cited multiple and specific reasons supporting his conclusion. Tr. at 72, 73-77.

First, the psychiatrist stated that he had “no reason to doubt that [the individual’s] last drink was July, seven months ago. I think his wife sees him all the time, and one thing about his pattern of drinking before is he just got either intoxicated or drank a lot of beer on Saturday, so I think it would be easy to see if he continued in that pattern, his wife would have noticed it . . .” Tr. at 75. Second, he noted that the individual’s “wife said all the right things, as far as a support system.” Tr. at 73. In particular, he noted that it was “rare in these hearings” for a wife to state that she would leave her husband were he to begin drinking again, adding that the individual’s wife “struck me as being honest . . .” Tr. at 74, 75. Third, he testified that the individual offered a “believable” motivation for his decision to quit drinking, in that he wanted to set an example as a youth mentor. Tr. at 74. Fourth, he was impressed by the individual’s response to the psychiatrist’s report. “The key thing,” the psychiatrist testified, is that “when he was told about a problem and saw that it was going to affect something significant, he -- he responded and stopped drinking.” Tr. at 75. Fifth, the psychiatrist noted that the individual “self-reported his problem accurately, and that was verified today. So that’s a plus, . . . and that’s different than usually happens.” Tr. at 80. Finally, the psychiatrist found it significant that the individual “now had a year and no new episodes -- or almost a year since I saw him, eight months or so, and we’re looking now at a last clinically significant problem in 2002, which is . . . a long ways ago.” Tr. at 76.

After citing all of the above, the DOE psychiatrist concluded, that he

would put the money on that he’s going to be able to maintain his sobriety for the next year or two, and then I would be able to vouch for saying that it looks like rehabilitation or reformation is in place and that there’s a low likelihood that he’s going to relapse into alcohol-related problems.

Tr. at 76-77.

I found the DOE psychiatrist’s testimony to be well-reasoned, supported by the facts, and persuasive overall. I concur in his opinion that there are facts in this case that are “rare in these hearings” and that these factors, such as the strong support of the individual’s wife and the individual’s honesty in reporting and facing up to his problems, bode well for his chances of maintaining his sobriety. There was clearly a period in the individual’s life when he got into trouble frequently (seven times, in fact) due to his drinking, and the frequency of this conduct from 1989 to 2002 does indeed raise a concern. But, as the DOE psychiatrist noted, the individual’s “last clinically significant problem” was nearly five years ago. In the time since, the individual has not only managed to stay out of trouble, but has made the positive choice to quit drinking altogether.

As stated above, I am directed under the Part 710 regulations to make a predictive assessment, which in the case of concerns relating to alcohol use boils down to assessing the likelihood that the

individual will use alcohol to excess in the future. Based upon all of the evidence before me, I agree with the opinion of the DOE psychiatrist that there is only a low risk that the individual will abuse alcohol in the future. As I find what risk there is to be acceptable, the security concern in this case has been sufficiently resolved.

III. *Conclusion*

Upon consideration of the record in this case, I find that there is evidence that raises a substantial doubt regarding the individual's eligibility for a security clearance. However, I find that the concern raised by that evidence has been sufficiently mitigated such that, "after consideration of all the relevant information, favorable and unfavorable," I can conclude that granting the individual's "access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. §§ 710.7(a), 710.27(a). The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Steven J. Goering
Hearing Officer
Office of Hearings and Appeals

Date: September 12, 2007